



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No.: IT-95-5/18-T

Date: 7 September 2010

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Order of: 7 September 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**ORDER SCHEDULING A HEARING PURSUANT TO RULE 54 *BIS*
(BOSNIA AND HERZEGOVINA)**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Government of Bosnia and Herzegovina

via Embassy of Bosnia and Herzegovina to
The Netherlands, The Hague

Standby Counsel

Mr. Richard Harvey

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”);

BEING SEISED OF the Accused’s “Motion for Binding Order: Government of Bosnia”, filed on 31 August 2009 (“Motion”), requesting under Rule 54 *bis* of the Rules of Procedure and Evidence (“Rules”) that Bosnia and Herzegovina (“BiH”) provide him with a number of documents he claims to be relevant to his case;¹

NOTING the complex procedural history following the filing of this Motion which has been outlined by the Chamber in its “Decision on Requests by the Accused and by Bosnia and Herzegovina”, issued on 2 July 2010 (“Decision”) and which will not be repeated here, including in particular the failure of BiH representatives to attend an oral hearing on 15 February 2009 to which they were invited by the Chamber;²

NOTING also that in the Decision, the Chamber (i) expressed the view that BiH’s co-operation in relation to the Motion had been “problematic and fraught with delay”; (ii) declined the Accused’s request to hold an oral hearing in relation thereto, on the basis that BiH had at that point made representations that it was taking steps to search for the documents sought by the Accused, and (iii) invited BiH to, by 15 August 2010, either complete that search or provide the Chamber with a report on its progress;³

NOTING that, on 24 August 2010, that is, nine days after the deadline given by the Chamber, the Ministry of Foreign Affairs of BiH filed a confidential submission indicating that little progress has been made in relation to its searches for the documents requested in the Motion;

NOTING that in response the Accused filed, on 30 August 2010, a “Submission on Request to Government of Bosnia and Herzegovina” (“Submission”), in which he argues that BiH’s co-operation in relation to the Motion is unsatisfactory and again requests that the Chamber hold an oral hearing with representatives of BiH, as this “may have a salutary effect upon [the BiH] authorities” and encourage them to co-operate with the Tribunal in a more efficient manner;⁴

¹ Motion, para. 1.

² Decision, paras. 1–9.

³ Decision, paras. 10–12.

⁴ Submission, paras. 13–14.

NOTING that Rule 54 *bis* (D)(i) allows the Chamber to hold a hearing on applications made pursuant to Rule 54 *bis* during which the state concerned shall have an opportunity to be heard;

NOTING that Rule 54 *bis* (D)(i) also provides that the relevant state shall be given no less than fifteen days' notice of the hearing on Rule 54 *bis* application;

NOTING that, pursuant to Rule 54 *bis* (F)(i), if the concerned state raises an objection on the basis that disclosure of documents requested would prejudice its national security interests, it shall file a notice of objection, not less than five days before the hearing, specifying such grounds, and shall identify "as far as possible, the basis upon which it claims that its national security interests will be prejudiced";

NOTING that, pursuant to Rule 54 *bis* (F)(ii), the concerned state may request, in its notice of objection, that the Chamber direct that appropriate measures be made for the hearing;

CONSIDERING that the co-operation of BiH in relation to the Motion continues to be problematic and fraught with delay;

CONSIDERING the Chamber's view that it is necessary now to proceed to the determination of the substance of the Motion and that, before doing so, the Chamber would find it beneficial to hear from BiH;

RECALLING that the Chamber indicated to the parties, in private session, during the status conference held on 3 September 2010, that it was minded to organise an oral hearing as requested by the Accused;⁵

CONSIDERING the responsibility of BiH to co-operate with the Tribunal pursuant to Article 29 of the Statute of the Tribunal ("Statute");

PURSUANT TO Article 29 of the Statute and Rules 54 and 54 *bis* (D) of the Rules;

HEREBY ORDERS that a hearing shall be held on Friday, 15 October 2010, at 10:00 a.m. in Courtroom 1;

⁵ Status Conference, T. 6140 (3 September 2010).

REQUESTS the authorised representatives of BiH to appear before the Trial Chamber at the time and place indicated above;

INFORMS the Office of the Prosecutor that its participation is not required but would be helpful should its representatives wish to attend the hearing;

INFORMS BiH that it may, should it deem it necessary, file a notice of objection pursuant to Rule 54 *bis* (F) not less than five days before the hearing;

INFORMS the parties that, following such filings, if any, the Chamber shall issue a detailed schedule of the order of presentation of arguments; and

REQUESTS the Registry to serve this Order to BiH.

Done in English and French, the English text being authoritative.



Judge O-Gon Kwon, Presiding

Dated this seventh day of September 2010
At The Hague
The Netherlands

[Seal of the Tribunal]